

Minutes
Catawba County Board of Commissioners
Regular Session, Monday, February 6, 2006, 8:45 a.m.

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The Catawba County Board of Commissioners met in regular session on Monday, February 6, 2006, at 8:45 a.m. in the 1924 Courthouse, Robert E. Hibbitts Meeting Room, 30 North College Avenue, Newton, North Carolina.

Present were Chair Katherine W. Barnes, Vice-Chair Dan Hunsucker and Commissioners Glenn E. Barger and Lynn M. Lail.

Commissioner Barbara G. Beatty joined the meeting at 8:50 a.m.

Also present were County Manager J. Thomas Lundy and County Clerk Barbara E. Morris.

1. Chair Katherine W. Barnes called the meeting to order at 8:45 a.m.
2. Vice-Chair Dan Hunsucker made a motion to move into Closed Session in accordance with General Statute 143-318.11(6) to consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee. The motion carried unanimously. The Board of Commissioners and County Manager J. Thomas Lundy went into closed session at 8:46 a.m. Commissioner Barbara G. Beatty joined the closed session at 8:50 a.m.
3. Vice-Chair Dan Hunsucker made a motion to return to open session at 9:40 a.m. The motion carried unanimously. Chair Barnes reported the Board had completed their performance evaluation of County Manager J. Thomas Lundy during the closed session and the Board had a very favorable report and look forward another year of good leadership in the County.
4. Vice-Chair Dan Hunsucker led the Pledge of Allegiance to the Flag.
5. The Invocation was offered by Commissioner Lynn M. Lail.
6. Commissioner Glenn G. Barger made a motion to approve the minutes from the Closed Session Meeting of January 9, 2006, the Special Joint Meeting of January 10, 2006 and the Regular Meeting of January 17, 2006. The motion carried unanimously.
7. Guests:
Chair Barnes recognized Sarah Talbert from the Hickory City School Board and Roy Carr from the NAACP.
8. Comments for Items not on the Agenda. None.
9. Presentations:
 - A. Chair Barnes presented Judy Ikerd, Budget Manager and Katrina Hawkins, Budget Analyst, with the Distinguished Budget Presentation Award. Chair Barnes noted this was the 16th consecutive year that the Budget Office had received this award and praised the Budget staff for their excellent work.
 - B. Dr. Duane Kirkman, Superintendent of Hickory City Schools, presented the Hickory City Schools Capital Construction Long Range Plan for 2005-2015. The North Carolina Department of Public Instruction requested that each Local Education Agency complete the N.C. Public Schools Facility Needs Survey which reflects the capital construction needs for the next ten years. The 10 year projections identified by the survey serve as a planning guide to both the Board of County Commissioners and the Board of Education as they consider the construction needs for the Hickory City Schools. The combined 10 year capital construction needs identified by the survey exceeded \$27 million for 10 school sites and ranged from new construction to renovations and additions to existing facilities.
 - C. Mr. Scott Millar, President of the Economic Development Corporation, presented the Corporation's Plan of Work for 2006. The Corporation's mission is to build a diversified economic base throughout Catawba County by recruiting new business and industry by retaining business and industry and helping them grow and foster the new creation of jobs. The revisions to the 2005 Plan of Work to reorient it and result in the 2006 Plan included: 1) Focus on organization and category goals rather than putting out fires; 2) use a "pull" product development strategy vs. a "push" marketing strategy; 3) target "skills-oriented" facilities by strong relationships with the UNC Center for Engineering

Technologies and the Hickory Metro Higher Education Center; 4) go deeper into existing industry services and 6) use contract based assistance when needed to accomplish goals (i.e. managing Committee of 100 or getting advertising/PR assistance).

In this economic development effort, 24 different projects, totaling more than \$64 million dollars were reported to the State in 2005 with 1340 jobs created and 1.2 million square feet absorbed or created in Catawba County. Mr. Millar said he thought the more exciting news was the coming to fruition of some projects that had been announced in the prior year – Getrag and ZF Lemforder and hiring for Flowers will come soon and he hoped to see jobs at Poppleman by the first of next year.

Scott said he hoped to have a multi-jurisdictional park option available to the County – at least sited, engineered and preliminary plans – by January of next year. He said another exciting opportunity was the idea of creating an eco-complex at the landfill – one man's trash is another man's treasure – using the by-products of the lumber company to create jobs – i.e. create pallets from the slabs coming off the lumber and then using the sawdust that comes off the production of the pallets to create energy.

The Economic Development Corporation is aligning itself with the Higher Education Center and the new Engineering Technology Center as well in an effort to get further involved in providing services for existing industry.

Commissioner Beatty thanked Mr. Millar for his presentation and the Economic Development Corporation's encouragement for new businesses and expansion of existing businesses in Catawba County.

Chair Barnes asked Barry Edwards, Director of Utilities and Engineering, to present a departmental report out of order on the agenda since it related to the Eco-complex brought up in Mr. Millar's presentation.

Barry Edwards came forward to present the request for the approval of the letter of intent between Catawba County and Petra Engineering for the Energy Facility Development. Petra' President Wayne Marshall was present at the meeting. During the budget process for fiscal year 2005/06, the Board was introduced to the Regional Eco-Complex and Resource Recovery Facility (Blackburn Landfill) Project. The purpose is to promote economic development and create new jobs in the green energy and business, agricultural, and environmental sectors. The Eco-Complex design will convert waste streams into commodities, provide conduit for moving science from the lab to the real world, and will promote Western North Carolina as a center for green energy, agricultural, and environmental innovation and enterprises. The County and its partnering municipalities can take advantage of the synergies with ongoing and planned activities within the Complex. These synergies and low cost "green" energy will help all waste management fees remain stable. With the approval of the budget for this fiscal year, a combination of water and sewer and solid waste funds were appropriated for the conceptual and preliminary Eco-Complex development. Providing for the complex will continue to be a legislative priority for the County.

Through Private-Public partnerships and the strengths of multiple institutions, the Eco-Complex presents an array of business development and research opportunities such as solid waste management, wastewater treatment and sludge management, water resource management, hydrogen cell production, carbon dioxide production and management, environmental remediation and restoration, pollution prevention and industrial ecology, air quality, agricultural, biological, aquaculture, bio-regenerative life support, environmental technologies, and business development. The Eco-Complex can accommodate research involving all aspects of biologically derived energy recovery and uses, as well as research of fuel cell, hydrogen, nitrogen, carbon dioxide, and ethanol for environmental, agricultural, and energy use. Within the Eco-Complex design, the County proposes to provide energy (steam and/or electrical power) to multiple users at the County's Eco-Complex by contracting with a private service provider (Service Agreement Management Contractor) through a long-term Service Agreement (SA) as outlined in the Letter of Intent (LOI) between Catawba County and Petra Engineering PLLC. The LOI and the services delivered therewith are necessary to and required for the Energy Facility and Eco-Complex development.

The LOI establishes a framework that includes four decision points for the development and The County's objective is to develop a high-tech Energy Facility, which will use the County's wood waste to produce energy, primarily in the form of steam. The Energy Facility is fundamental to the Eco-Complex design and essential to university research and the synergetic relationships between Eco-Complex partners. All Eco-Complex partners will employ and reduce their respective operational costs by employing the energy produced by the Energy Facility and synergies acquired by converting waste streams to commodities.

The Project's core service to the County will be wood waste processing that results in heat energy. The SA Management Contractor will provide all essential structures, equipment and appurtenances for processing wood waste byproducts from G&G Lumber, a pallet company, the County landfill and other Eco-Complex partners into heat energy for operating wood, brick and pottery kilns, the sludge facility, greenhouse(s), turbine electrical generators, a University Research Facility and any future needs the County deems suitable.

The Project will operate within the confines of the County's existing or modified Federal EPA Title V Air Quality and Sub-title D Landfill Permits. As air quality and other environmental concerns are of high importance to the health and well being of Catawba County citizens and the fact that the Energy Facility is vital to all Eco-complex partners' interest, it is imperative that the County permit, oversee and administer the Energy Facility.

The business partners that comprise the Eco-Complex are financially and operationally independent. However, their co-location reduces individual waste streams and increases green and renewable energy production resulting in an improved environment and reduced risk for the County. The Energy Facility has minimal risk associated with its development due to multiple uses for energy outputs (hot air, hot water, steam, and electricity). There is also flexibility to modify and change uses with ease and minimal cost by increasing and acquiring additional bio-fuel. All development costs incurred will be reimbursed through the Energy Facility monthly user fees and electrical power generation and sale.

The LOI provides for Catawba County to follow through with its planned Eco-Complex design, specifically the Project. County will own the land and premises associated with the Project. The County will own and distribute the energy produced by the Project. The Project will employ a renewable energy source generated from wood waste from G&G Lumber, a pallet company and the County landfill to generate steam, heat and electricity. The Private-Public partnership structure will allow the SA Management Contractor and the County to benefit from and optimize Federal and State incentives for employing renewable energy. The Project will generate electricity from steam-driven turbine-generators using boilers to produce both heat and electricity (cogeneration). Cogeneration converts up to 85 percent of the fuel's potential energy into useful energy in two primary forms: electricity and heat.

Under the terms of the LOI Petra Engineering PLLC will provide a preliminary engineering study to include Project feasibility. Upon Board of Commissioners acceptance of the preliminary engineering and project feasibility study, Petra will provide engineering design. Upon completion and acceptance of the engineering design, the Catawba County Board of Commissioners may enter into a SA for the completion of the project, which will include the financing, construction, management of third party operation and maintenance, and financial reporting.

Within the terms of this LOI, the Board of Commissioners is provided the opportunity to decide whether or not to proceed with the Project as follows:

➤ **Decision Point 1 Preliminary Engineering and Project Feasibility Study:**

Upon approval by the Board of Commissioners of the Preliminary Engineering and Project Feasibility Study proceed with Decision Point 2. If the County chooses not to proceed with the project at this point

Petra will be compensated \$25,000 for the preparation of the Preliminary Engineering and Project Feasibility Study, which will become the property of Catawba County.

➤ **Decision Point 2 Project Design Documents:**

Upon approval by the Board of Commissioners of the Project Design Documents proceed with Decision Point 3. If the County chooses not to proceed with the project at this point Petra will be compensated for actual costs incurred and verified by County, pursuant to Petra's records and industry standards, plus 10% management and administrative cost at an amount not to exceed \$500,000 for the preparation of the Preliminary Engineering and Project Feasibility Study and the Project Design Documents, which will become the property of Catawba County.

➤ **Decision Point 3 Service Agreement:**

In the event that Petra is not the SA Management Contractor, Petra will be compensated for actual costs incurred and verified by County, pursuant to Petra's records and industry standards, plus 10% management and administrative cost for the preparation of the Preliminary Engineering and Project Feasibility Study and the Project Design Documents, which will become the property of Catawba County.

➤ **Decision Point 4 Third Party Operations and Maintenance Selection:**

The County will be involved in the selection of the provider of Operations and Maintenance through an RFQ/RFP process and will have the right of first refusal in making the selection.

This LOI and associated Project addresses Phase One of the Energy Facility, it is anticipated the Energy Facility will be developed in three independent phases as follows:

- Phase One (Third Quarter 2006):
 - G&G Lumber kiln one
 - Pallet-One kiln
- Phase Two (Second Quarter 2007):
 - G&G Lumber Kiln two
 - Greenhouse(s)
 - Blue Ridge kilns
- Phase Three (First Quarter 2008):
 - G&G Lumber Kiln three
 - Bio-Solids Facility (date is flexible and independent)
 - Turbine Electrical Generator(s).

Chair Barnes wanted to clarified that after the design documents are created who was going to actually build the plant. Mr. Edwards replied that once the design was in hand, the management contractor would construct the plant and the debt for building the plant would be recovered through fees paid by the users of the steam – there would be contracts for entities to purchase the steam and the County would control the cost of that steam, just as the Board has control of GDS garbage rates.

Commissioner Lail commented that she thought public-private partnerships are an advantage for both sectors and she was glad to see that the County was pursuing this relationship. Commissioner Lail made a motion to approve the letter of intent between Catawba County and Petra Engineering for the developmental services for the Eco-Complex Energy Facility Development and authorize the County Manager to sign the letter of intent. The motion carried unanimously.

10. Public Hearing:

Barry Edwards, Utilities and Engineering Director, presented a request for the Board of Commissioners to hold a public hearing to receive citizen input in the consideration of the Landfill Siting Study pertaining to the proposed site of an expansion of the Blackburn Landfill and approve the Landfill Siting Study. Mr.

Edward noted that Joe Wiseman, P.E. of Camp, Dresser and McKee was present to present the study and available for any questions the Commissioners might have. Mr. Edward noted he did not want people confused with the previously presented Eco-Complex and this property – He said the siting study addressed what was attached to the landfill. The land where the Eco-Complex is proposed would be land that had been exhausted as to a soil source needed for the landfill.

Mr. Wiseman stated that pursuant to North Carolina General Statute §153A-136, before proceeding with an expansion of the landfill, the Board must first consider alternative sites, socioeconomic and demographic data and hold a public hearing to receive citizen input. In November 2002, the Board of Commissioners accepted the Landfill Alternative Siting Study prepared by Camp, Dresser and McKee. Since the original study, several adjacent properties have been acquired (Xiong, Knox and Hefner properties) for soil material to be employed in daily landfill operations that may also provide additional landfill space; thus, on June 6, 2005, the Board approved staff to proceed with an update to the Landfill Alternative Siting Study. The update would apply the same criteria as the original study. Attorney Eades explained that the Statute governing the expansion of landfills was to prevent landfills from being located in areas of low socioeconomic status and required the County to consider alternative sites. He said it was important that the County continue to use the same criteria as they move forward. Vice-Chair Hunsucker made a motion to approve the Landfill Alternative Study Update by Camp, Dresser and McKee and to also use the same criteria that was used in the original study. The motion carried unanimously.

This updated study utilizes the same general methodology, screening criteria, and evaluation criteria to recommend a preferred site. The objectives of this study are to identify and select alternative landfill sites; evaluate and compare those sites to the expansion of the Blackburn Landfill; and recommend a single site with which to move forward in the permitting process.

Based on the results of the updated study, Camp Dresser and McKee recommends the proposed Blackburn expansion site as the preferred site for the County to proceed with the permitting process. The proposed Blackburn expansion site has clear advantages over two of the three sites with respect to engineering and environmental criteria. Some of the more important advantages of this site include the County's ownership of the proposed expansion site, the anticipated ease of permitting, and the proximity to the County's critical customer, City of Hickory, and the relatively low cost.

Chair Barnes open the public hearing and noted the hearing had been advertised as required and asked for anyone wishing to speak to come forward. Hearing and seeing no one, Chair Barnes closed the public hearing. Commissioner Glenn Barger made a motion to approve the Landfill Alternative Siting Study. The motion carried unanimously. Barry Edwards said that since the study had been approved, Utilities and Engineering would be coming before the Board one more time after environmental studies had been complete and ask the Board to make a request to the Department of Environmental Resources to approve the land as being part of the landfill.

Chair Barnes then recognized that Hickory City Councilman Brad Lail had joined the audience and welcomed him.

11. Appointments.
Commissioner Lynn Lail recommended the reappointment of Jane Turner Murphy for a fourth term, the reappointment of Bari Cooper for a second term, the reappointment of Margery Adams for a fifth term and the appointments of Mildred Owens and Margaret Edward to initial one-year terms to the Nursing & Rest Home Advisory Committee. These recommendations came in the form of a motion. The motion carried unanimously.
12. Consent Agenda.
J. Thomas Lundy, County Manager, presented the following items on the consent agenda:
 - a. Request for a bid award for a new hydraulic excavator at the landfill and the declaring as surplus and trade-in of a 1992 Caterpillar excavator. The low bidder (of three) was Linder Industrial Machinery Co. of Charlotte had four exceptions to the specs but the staff did a site visit and did not think those four exceptions provided a problem and did not warrant the \$17,000 difference in the bid. Staff recommended the bid be awarded to Linder for a net bid with warranty and trade-in of \$201,501.00.

- b. Request for the Board to accept the bid from ASC Timber, Olin, NC in the amount of \$131,250 for 30 acres of timber located at Riverbend Park. There were 5 bidder with ASC Timber being the highest. Mr. Lundy noted that the initial estimate for this timber was less than half this amount. Ray Taylor conducted the sale and will get 8% of the profits and will monitor the harvesting. The funds will be placed in Parks Preservation Fund for the Board to use for future expansions or new parks or matching funds for state grants.
- c. Request for approval of a joint grant application with the City of Hickory for the 2006 Justice Assistance Grant (JAG) and the allocation of \$10,945 representing the County's share of the grant funds. The Sheriff's Office proposed to purchase a forensic light source with these funds.

Chair Barnes asked if any commissioner would want any item broken out from the consent agenda and no items were asked to be broken out. Commissioner Barbara Beatty made a motion to approve the consent agenda. The motion carried unanimously.

13. Departmental Reports.

A. Planning:

Mary George, Senior Planner, presented a request for the Board of Commissioners to adopt a resolution in support of the reclassification of Maiden Creek and Allen Creek from a WS-II watershed to a WS-V watershed classification (without a supplemental classification) as requested by the Town of Maiden

In 1989, the State of North Carolina passed the Watersupply Watershed Protection Act. The purpose of this law is to protect the lakes and rivers in the State where people get their drinking water. The State required all cities and counties that have these lakes and rivers to protect them by passing the State's minimum watershed regulations. In 1993, Catawba County complied with this law and adopted watershed regulations for six State-designated watershed areas. Included within this designation were Maiden Creek and Allen Creek, which served as the Town of Maiden's primary and secondary drinking water supply.

In 2000, Maiden evaluated the structural integrity and capacity of their reservoir dam and decided to abandon the reservoir for its drinking water supply. In January 2002, the Town of Maiden contracted with the City of Hickory to purchase water for its drinking source. With the abandonment of Maiden Creek and Allen Creek as its drinking supply, the Town has requested the State's reclassification of the creeks as watersupply watersheds. With the majority of the watersupply watershed lying within Catawba County's jurisdiction, the State has recommended that Maiden request Catawba County's support for the reclassification of the watersupply designation for Maiden Creek and Allen Creeks. The Town of Maiden has formally requested the County to adopt a resolution of support.

Staff of the NC Department of Natural Resources – Water Quality section has indicated that they would recommend Maiden Creek and Allen Creek to be classified as a WS-V designation. A WS-V classification is required for all former watersupply designated rivers/creeks. Within a WS-V watershed, no land use restrictions are required for development nor are there discharge restrictions for wastewater like other watersupply classifications.

With approval of the reclassification by the State, Catawba County and Maiden should then rescind their watershed regulations applicable to the Maiden and Allen Creek watersheds. This will require a public hearing to amend the watershed ordinance, which is contained within the zoning ordinance. The County's current watershed ordinance requires a minimum one-acre for new subdivision lots and limits the imperviousness of non-residential development to 12% of the lot. Within the critical area (1/2 mile around the Maiden Reservoir), development is further limited to two-acre lot sizes and 6% imperviousness for non-residential development. When the County and Maiden rescind their regulations, there no longer will be an imperviousness restriction for non-residential development and the lot size requirements will then be based on the local governments current zoning regulations.

The State Water Quality staff has indicated that with the WS-V watersupply designation they will request the Environmental Management Commission to retain a supplemental classification for Maiden Creek and Allen Creek. The supplemental classification was automatically assigned when the watershed was designated WS-II. With the proposed change to WS-V, the supplemental classification should be removed by the State. If the supplemental classification were retained, the State would restrict new development

similarly to the current WS-II watershed regulations, with 12% imperviousness and one-acre lot sizes. High-density options would be allowed but stormwater controls must be designed, installed and maintained.

According to the State, a supplemental classification is assigned for the following water characteristics:

- 1) excellent water quality, as demonstrated by benthic sampling (i.e. presence of water bugs)
- 2) native trout waters
- 3) critical habitat areas; or
- 4) WS-I or WS-II water supplies

In the State's Catawba River Basin Plan, the benthic sampling for Maiden Creek indicates "fair to good," not excellent as required for the supplemental designation. None of the other parameters are met for justification to retain the supplemental classification; therefore, the State should remove the supplemental designation.

By retaining the supplemental classification, the Maiden Creek and Allen Creek watersheds would be subject to the same watershed-related land use restrictions which are currently in place for the WS-II watershed designation. The primary reason for our request to reclassify the watersheds from a WS-II designation to a WS-V is to remove the watershed-related land use restrictions.

County Manager Lundy noted that Commissioner Hunsucker was concerned at subcommittee about the County's position on environmental quality and wanted to make sure that the resolution was very clear that the County was concerned about this quality and a whereas was to be added to the resolution but Mr. Lundy did not see this in the resolution that was presented with the staff report. Ms. George said that whereas clause would be added. Commissioner Lail said she would like this added to the resolution.

Commissioner Lail made a motion to approve the resolution with the requested addition. The motion carried unanimously,

The revised resolution read as follows:

RESOLUTION #2006-

A RESOLUTION TO SUPPORT THE RECLASSIFICATION OF MAIDEN CREEK AND ALLEN CREEK

WHEREAS, the North Carolina General Assembly ratified the Watershed Protection Act of 1989 which required local jurisdictions to adopt watershed protections regulations to protect drinking water supplies in the State; and

WHEREAS, Maiden Creek and Allen Creek were designated by the State as WS-II watersheds to protect the Town of Maiden's watersupply reservoir; and

WHEREAS, Catawba County adopted watershed protection regulations in November 1993, which included land use controls for the Maiden Creek and Allen Creek watersheds; and

WHEREAS, in the Fall of 2002, the Town of Maiden abandoned the City Reservoir as its municipal water supply and contracted with the City of Hickory to purchase water; and

WHEREAS, Maiden Creek and Allen Creek no longer serve as a drinking water supply for the Town of Maiden; and

WHEREAS, the Town of Maiden has requested Catawba County's support for the reclassification of Maiden Creek and Allen Creek to a WS-V watershed classification; and

WHEREAS, Catawba County affirms its support for environmental protection and clean water in the rivers and lakes in the County balanced with development in accordance with the County's Small Area Plans;

THEREFORE BE IT RESOLVED that Catawba County hereby requests the North Carolina Environmental Management Commission's reclassification of Maiden Creek and Allen Creek from a WS-II watersupply watershed classification to a WS-V watershed designation; and

FURTHERMORE BE IT RESOLVED that Catawba County does not support a supplemental classification for Maiden Creek and Allen Creek because the water quality parameters in the creeks do not meet the State's requirements for designation of a supplemental classification.

Adopted this _____ day of _____ 2006

B. County Manager's Office/Elections:

Lee Worsley, Assistant County Manager, Larry Brewer, Board of Elections Director and David Hood, Board of Elections Member came forward to present a request that the Board of Commissioners authorize appropriate county officials to execute a grant agreement with the State Board of Elections regarding the purchase of DRE, Optical Scan and ADA Automark voting equipment and adopt a related supplemental budget appropriation.

Catawba County purchased the eSlate voting equipment tabulators from Hart InterCivic in January 2004 and the equipment was certified by the State Board of Elections to be used in Catawba County. The purchase of voting equipment from Hart was the result of a very thorough procurement process. Following purchase of the equipment, Catawba County staff implemented a comprehensive voter education campaign to educate the public on the new equipment. The purchasing process and the education process earned Catawba County a National Associations of Counties (NACO) award in June 2005. Since purchasing the equipment, the County has enjoyed an extremely positive relationship with Hart InterCivic and has had very successful elections with the Hart equipment.

During the November 2004 General Elections, problems with voting equipment in Carteret County, North Carolina resulted in a delay in declaring a winner in the Commissioner of Agriculture and the Superintendent of State Public Instruction races. As a direct result of the issues that occurred in Carteret County, Senate Bill 223 was introduced and subsequently approved by the General Assembly and signed by the Governor. Senate Bill 223 was titled:

An Act to Restore public confidence in the elections process by requiring that the State Board of Elections, through the development of a Request for Proposal, ensure that all voting systems generate either a paper ballot or a paper record by which voters may verify their votes before casting them and which provides a backup means of counting the vote that the voter casts; by providing statutory guidance as to counting; by standardizing purchasing of voting systems in North Carolina, including a review of source code for software related to those voting systems and authorization to establish the role of the State Board of Election and County Board of Elections related to training and support of voting systems; by requiring postelection testing of voting systems, including a paper sample-count; by expanding the right to a hand-to-eye recount of paper ballots; and by permitting a pilot program to experiment with nonpaper means of voter verification and ballot backup.

Despite opposition from the County, all members of our local delegation voted in favor of Senate Bill 223. Senator Austin Allran was a co-chair of the Joint Select Committee on Electronic Voting Systems, which held hearings following the 2004 General Elections. This Committee also made recommendations, which led to the drafting of Senate Bill 223.

One of the requirements of the new law is that Direct Record Equipment (DRE) must produce a verifiable paper receipt for each vote cast. The paper receipt would be displayed to the voter while he/she was casting their vote and then would remain with the machine if the need for a hand to eye recount occurred. The Hart InterCivic Machines have the ability for a printer to be added that would produce the required receipt. Staff was working with Hart InterCivic on this issue when Hart determined that other provisions of the law were going to prevent Hart from continuing to do business in North Carolina.

Senate Bill 223 required that the State Board of Elections decertify all voting equipment in North Carolina and issue a Request for Proposal (RFP) for voting equipment providers to be recertified. Once the RFP

was issued, Hart informed Catawba County that they would not be submitting a bid for their equipment to be recertified in North Carolina. The restrictive nature of the law has made it impossible for Hart to continue to do business in the state. In fact, every elections equipment vendor previously doing business in North Carolina, except ES&S, also decided not to participate. This unfortunately leaves North Carolina in a noncompetitive posture and gives counties no choices with respect to voting equipment.

Hart InterCivic specifically is not comfortable with two provisions of the new law:

- The bid for voting equipment requires a \$7.5 million performance bond from each vendor. The performance bond is in place to fund a statewide election if voting equipment fails during the election. It is understandable why there is an interest in having a bond large enough to cover a statewide election in case of voting machine malfunction, but it is not understandable why each vendor has to post a separate bond. For Hart, the bond requirement would cost \$75,000 - \$150,000 a year. County staff has proposed to the State Board of Elections that in order to meet the intent of a statewide performance bond, the State Board of Elections, or another entity, hold one performance bond in the amount of \$7.5 million. The modification would allow any vendor to justify the cost of doing business in North Carolina, no matter how many, or how few, counties the vendor does business with. By having only one performance bond, the State Board would require vendors to pay their proportionate share of the yearly cost of the bond in order to remain certified. For example, the cost of the bond could be based on the number of counties using a particular vendor's equipment. If this were the case and the vendor was doing business in twenty (20) counties, the vendor would be responsible for 20% of the performance bond cost. There are several positive aspects to this proposal. The first is that the State would still be able to have access to a \$7.5 million performance bond, therefore meeting the intent of the statute. Secondly, each vendor would ultimately pay less for the performance bond because there would be only one bond. Hopefully the vendors would then reflect that savings in the cost of their equipment.
- Another aspect of the law is that vendors would be required to place their source code in escrow. In fact, Hart InterCivic has placed its source code in escrow in Indiana and California. The new law in North Carolina is unacceptable to Hart because it gives extremely broad access to their source code. There are some minor changes that we would propose to the statute that would still allow the source code to be placed in escrow while at the same time protect a business's proprietary information.

For the issues outlined above to be addressed, the General Assembly would have to make changes to Senate Bill 223. The County has been working with the Catawba County legislative delegation, the North Carolina Association of County Commissioners and other counties to get a Special Session of the General Assembly called to address the problems in Senate Bill 223. Our legislative delegation has written a letter to the Governor requesting a Special Session. The Office of Governor Easley has sent a letter stating that a Special Session will not be called to address this issue. The County needs to move forward with the purchase of certified voting equipment. One stop voting for the 2006 primary will begin on April 13, 2006 and the primary will be held on May 2, 2006.

The Board of Commissioners authorized staff to file an appeal in Wake County Superior Court regarding the decertification of the Hart equipment. County staff worked with staff at the North Carolina Association of County Commissioners and other counties to attempt to find grounds on which an appeal could be filed. These conversations included consultation with an attorney who specializes in elections law. Unfortunately, since this was a legislative decision and the State Board of Election carried out the legislative direction, there was no basis for filing an appeal.

The State of North Carolina is providing grant funds through the Federal Help America Vote Act (HAVA) grant to assist in purchasing equipment. Catawba County initially was eligible for \$563,764 in grant funding. On January 26, 2006, the County was notified that it would receive an additional \$30,000 for a total of \$591,764 in grant funding. This grant funding will be paid directly from the State Board of Elections to the vendor (ES&S). As a result, it will not be necessary for the County to appropriate the grant funds. There has been a good deal of misinformation generated recently that the grant funding provided by the State would pay for all optical scan equipment, so there should be no impact to local taxpayers. As the figures below show, this is certainly not true. While the grant funding does fund the majority of the cost of optical scan equipment, it will not fund all of the cost and the County will be liable for a portion of the cost of

new voting equipment. Additionally, these figures do not include the tremendous amount of cost in staff time that will be required to implement the new voting system

As discussed earlier, only one vendor, ES&S is certified to sell election equipment in North Carolina. The County has four options available in order to be ready for the primary. The options are outlined below:

- **Option 1** - The County could use paper ballots for the Primary. If this option were chosen, the County would still be required to purchase ADA accessible voting equipment for individuals with disabilities to be placed at each precinct. The approximate cost for this option would be \$331,230. Of this cost, HAVA grant funding would pay for \$331,230 and the County would be responsible for \$0.
- **Option 2** - The County could purchase the ES&S iVotronic touch screen DRE voting equipment for all precincts and one-stop sites. The approximate cost for this option would be \$1,682,810. Of this cost, HAVA grant funding would pay for \$593,764 and the County would be responsible for \$1,089,046.
- **Option 3** - The County could purchase Optical Scan equipment and ADA equipment for each of the precincts and the one-stop sites. The approximate cost for this option would be \$682,675. Of this cost, HAVA grant funding would pay for \$593,764 and the County would be responsible for \$88,911.
- **Option 4** - The County could purchase optical scan/ADA units for all precincts and DRE machines for the one-stop sites. The use of DRE's at one-stop sites would make it much easier for poll workers to deal with the different ballot styles. The approximate cost for this option would be \$812,155. Of this cost, HAVA grant funding would pay for \$591,764 and the County would be responsible for \$220,391.

As required by Senate Bill 223, the County hosted a demonstration of DRE, optical scan and ADA equipment on January 3, 2006 from 4:00 - 8:00 p.m. at the Catawba County Library in Newton.

The Catawba County Board of Elections met on January 4, 2006 to make a recommendation to the Board of Commissioners on the type of voting machine to purchase. The Board of Elections voted unanimously to recommend optical scan/ADA machines at the precincts and ADA compliant DRE machines at the County's one-stop sites (**Option 4**).

After reviewing the recommendation of the Board of Elections, a mix of DREs and optical Scan equipment is the most effective method of purchasing equipment (**Option 4**).

The State Board of Elections has not yet come to terms with ES&S on a contract. However, the County will be accepting the terms of the contract through reference at the time that the HAVA grant agreement is executed with the State Board of Elections

Catawba County is prepared to begin selling its Hart voting equipment immediately. Staff is currently communicating with several jurisdictions that have expressed interest in the equipment.

The Finance and Personnel Subcommittee recommended that the Board of Commissioners authorize appropriate county officials to execute a grant agreement with the State Board of Elections regarding the purchase of DRE, Optical Scan and ADA Automark voting equipment at a cost not to exceed \$812,155.00 (**Option 4**). The Finance and Personnel Subcommittee also recommended that the Board of Commissioners approve the request to appropriate \$220,391 from fund balance to purchase the new DRE, Optical Scan and ADA Automark voting equipment.

The requested Supplemental Appropriation is as follows:

Revenue:

110-190050-690100

\$220,391

Fund Balance Appropriated

Expense:

110-140050-985000

\$220,391

Other Capital Equipment

Chair Barnes asked about the local appropriation and Mr. Worsley confirmed this was the additional \$30,000 referenced and this amount was included in the quoted cost figures. Mr. Worsley said the State will pay for the acceptance testing (approx. \$25,000). Commissioner Barger asked about the amount that would be generated from the sale of the Hart equipment and asked if Mr. Worsley could give them a ballpark figure on the amount. Mr. Worsley said they were hopeful the County would get 50 cents on the dollar which would be approximately just over one-half million dollars. Commissioner Barger pointed out that if the County did realize this amount from the sale of the County's existing equipment, it would actually result in a positive cash flow. Mr. Worsley said this was true but it was important to note that there have not been any formal offers. County Manager Lundy also pointed out that with the optical scanners there were ongoing costs in terms of paper so over time those costs would add up – so the County may end up with cash in the short term but with equipment that is not as flexible. Commissioner Barger questioned how much training would have to take place before the general public would be ready to use this equipment and Election Director Larry Brewer said he did not see that much training involved since the County had used the optical scanning equipment before and the public was still familiar with it. Chair Barnes asked how many ballots had to be created for the elections. Mr. Brewer said there could be at least six ballots but the last election had 79 ballot styles. Vice-Chair Hunsucker asked Mr. Brewer if he thought all the publicity about changing voting machines would discourage voters from coming out to vote and Mr. Brewer felt that it would have little effect on the turnout but might increase it a little.

Commissioner Beatty said she thought this process had been one of the most frustrating things she had dealt with on her time on the Board – The County had bought the very best equipment and its very frustrating to have to look at new equipment. She questioned whether there was any chance that anything could change regarding this issue with the legislature and Mr. Worsley noted that the request for a special session had been turned down and by the time the General Assembly met again, approximately 95 counties would have already purchased their new equipment. Chair Barnes noted the timeframe given to make these required changes had been a very frustrating part of the issue.

David Hood said the timeframe issue was major – and they could only HOPE that the sole vendor can produce the equipment in time.

Commissioner Barger noted he did not particularly like the options but given the circumstances, made a motion to approve the staff request to execute a grant agreement with the State Board of Elections regarding the purchase of DRE, Optical Scan and ADA Automark voting equipment at a cost not to exceed \$812,155.00 and approve a request to appropriate \$220,391 from fund balance to purchase the equipment and authorize the County Manager to sign the grant agreement. The motion carried unanimously.

14. Other Business. None.
15. Attorneys' Report. None.
16. Manager's Report. None.
14. Adjournment. Commissioner Barbara Beatty made a motion to adjourn at 11:08 a.m. The motion carried unanimously.

Katherine W. Barnes, Chair
Board of Commissioners

Barbara E. Morris, County Clerk